IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/06/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.17078 of 2003
and W.P.No.17079 to 17083 of 2003

Parameswari .. Petitioner
in WP:17078/03

M.Ramasamy .. Petitioner
in WP:17079/03

S.Rajendran .. Petitioner
in WP:17080/03

Alliya Begum .. Petitioner
in WP:17081/03

V.Alamelu .. Petitioner
in WP:17082/03

Ghose Khan .. Petitioner
in WP:17083/03

-Vs-

1. The District Collector
Kancheepuram District
Kancheepuram.

2. The Tahsildar
Taluk Officer
Chengelpet
Kancheepuram District

3. The Village Administrative Officer
Puddupakkam Village
Chengelpet Taluk
Kancheepuram District .. Respondents
in all WPs.

PRAYER: Petition under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

For Petitioners: Mr.R.Karuppan

For Respondents: Mr.M.S.Palanisamy
Addl. Govt. Pleader

:ORDER

The petitioners in these writ petitions are challenging the notice dated 3.6.2003 of the first respondent issued under Section 7 of the Land Encroachment Act (for brevity the 'Act'), proposing to evict the petitioners from their respective lands of an extent of 2 to 3 cents approximately terming them as unauthorized occupants.

2.1. Mr.R.Karuppan, learned counsel for the petitioners seriously contends that the respondents have already issued occupation certificate either to the petitioners themselves or to their forefathers acknowledging their right to possess and enjoy their respective lands for decades together. Substantiating the above contention, Mr.R.Karuppan, learned counsel for the petitioners also brought to my notice that the petitioners were permitted to put up construction and to pay the property tax to the local bodies and they also availed electricity service connection from the Electricity Board, and therefore, the petitioners have got a vested right over the respective lands by virtue of the act of the respondents, more particularly in view of issuance of the occupation certificate by the Revenue authorities themselves.

2.2. Yet another contention of Mr.R.Karuppan, learned counsel for the petitioners is that once the respondents have acknowledged that the impugned sites are house-sites, the same are barred from the purview of the Act as per Section 2(1)(e) of the Act, which reads as follows:

Section: 2 □ Right of property in public roads, etc. waters and lands:
(1)All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks and all backwaters, canals and water-courses and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) to (f) .....

(e) of any other person holding land under grant from the Government otherwise than by way of licence,

and, as to lands save also in so far as they are temple site or owned as house-site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force subject always to all rights of way and other public rights and to the natural and easement right of other land-owners, and to all customary rights legally subsisting."

3.1. Mr.M.S.Palanisamy, learned Additional Government Pleader taking notice on behalf of the respondents contends that whether the petitioners have

got vested right on the strength of the occupation certificate issued by the Revenue authorities is a matter to be proved by the petitioners before the authority concerned during the enquiry proposed to be held pursuant to the impugned notice dated 3.6.2003 and the same shall be considered by the authorities concerned after going through the relevant revenue records, and secondly, whether the impugned sites are house sites or not is also to be decided in the light of the relevant revenue records.

3.2. Mr.M.S.Palanisamy, learned Additional Government Pleader, also contended that the petitioners are not prejudiced by the impugned notice dated 3.6.2003 requiring them to appear for the enquiry, and therefore, they are not entitled to challenge the impugned proceedings under Section 7 of the Act.

4. I have given careful consideration to the submissions of both sides.

5. The Tamil Nadu Land Encroachment Act, 1905 is intended to provide measures for checking unauthorized occupation of lands which are the property of Government. The Act also provides issuance of notice in compliance of the principles of natural justice; holding summary proceedings, hearing the alleged unauthorized occupants and passing appropriate orders.

6. Whether the petitioners are entitled to seek the benefit of Section 2(1)(e) of the Act claiming the impugned sites are house-sites or not, as rightly pointed out by the learned Additional Government Pleader, is a matter to be appreciated and considered by the authorities who are expected to hold a summary enquiry into the matter in light of the relevant revenue records. At this stage, therefore, it may not be proper for this Court to entertain the above writ petitions against the notices issued under Section 7 of the Act.

7. That apart, Section 2(2) of the Act makes it clear that all public roads and streets, vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government. If that be so, if the petitioners have put up any construction or house on the public road, that itself will not confer any right on them to bring it under Section 2(1)(e) of the Act as Section 2(2) of the Act makes it very clear that such houses put up in public roads and streets, vested in any local authority shall, for the purposes of this Act, be deemed to be the property of the Government.

8. For the reasons aforesaid, suffice it to permit the petitioners to submit their explanation and appear before the authorities concerned on the date of enquiry and satisfy the authorities that the respective sites are house sites which are excluded under Section 2(1)(e) of the Act, but does not fall under Section 2(2) of the Act, in which event, the authorities concerned shall appreciate the grievance

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P.D.DINAKARAN,J.
of the petitioners and pass appropriate orders in accordance with law. Till then, the respondents shall maintain status-quo. If the petitioners are still

aggrieved by the orders of the authorities concerned, the petitioners are at liberty to prefer an appeal under Section 1 0 of the Act in a manner known to law.

With these observations, these writ petitions are disposed of. No costs. Consequently, W.P.M.P.Nos.21346 to 21351 of 2003 are closed.

Index :Yes
Internet:Yes

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